

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.28 OF 2007

Dadaji Suka Khare

...Appellant

vs.

Vinayak Daji Khare & Ors.

...Respondents

Mr.S.M.Railkar for the Appellant

Mr.S.Rajeshirke for Respondent Nos.1 to 3

CORAM: A.S.OKA, J.

DATE : JULY 18, 2007.

P.C.:

1. The present Appeal is preferred by the original first Defendant in a suit for declaration filed by the Respondent Nos.1 to 10. Declaration which is prayed for and granted by the trial court is that the compromise effected between the Appellant and the Respondent 14 (original defendant Nos.1 and Defendant No.3 respectively) in a Suit No.131 of 1980 is not binding on the original Plaintiffs.

2. The learned Counsel for the Appellant submitted that such a declaration could not have been granted as the suit itself was not maintainable. He invited my attention to the pursis filed on 4th November 2000 in civil Appeal No.32 of 1991. He submitted that the parties have settled the dispute by virtue of the said pursis.

3. It must be stated here that admittedly the said pursis is

not on record. There is a finding of fact recorded by the trial court that though the original Plaintiffs were made parties to the suit No.131 of 1980, on an application made by the Appellant, their names were permitted to be deleted and that they are not parties to the compromise. In view of this finding which is based on documentary evidence on record, it was obvious that the original Plaintiffs were not bound by the consent decree as they were not parties to the said decree. Only on this ground, it is not possible to find fault with the impugned Judgement and Decree. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

4. It is made clear that if in some other proceedings, the dispute between the parties is amicably settled, such settlement will not be affected by the order passed in this Second Appeal.

JUDGE

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